IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 283 OF 2005

1. Sadanand Varde,)
Residing at "Kapil Vastu",)
S. V. Road, Bandra (West),)
Bombay-400 050.)
)
2. Achintya Mukherjee,)
Residing at "Pancharatna")
Almeida Park, Bandra (W),)
Bombay - 400 050.)
)
3. Arvind Ramnath Shenoy,)
Residing at A/19, Sudham,)
Shivrusti Road, Kurla (E),)
Bombay-400 024.)
)
4. Sybil Sequira,)
residing at "Sequilla",)
Dr. Peter Dias Road,)
Bandra (West),)
Bombay 400 050.)
)
5. Radhika Ramasubban,)
residing at 14, Bandstand,)
Apts, B.J. Road, Bandra (W)
Bombay - 400 050.)
)
6. Shyama Kulkarni,)
residing at "Rendezvous")
Perry Road, Bandra (W),)
Bombay-400 050.)
)
7. Dileep Saptarshi,)
residing at 11, Garden)
Homes, Chitrakar Dhurandhar
Marg, Bombay-400 052.) Petitioners

Vs.

1. State of Maharashtra)
through its Secretary)
Urban Development Ministry
having office at)
Mantralaya, Bombay -031.)
)
2. Municipal Corporation of)
Greater Bombay - statutory) Respondents
Authority established in 1988.

3. Johny Joseph,)
(at the material time)
Municipal Commissioner,)
Greater Bombay, both)
having offices at)
Mahapalika Marg,)
Bombay - 400 050.)

4. Dy. Chief Engineer,)
(Building Proposals))
WS having office at)
R. K. Patkar Marg,)
Bombay- 400 050.)
)

5. Maharashtra Area and)
Development Authority)
established U/MHADA Act'76)
having office at Griha)
Nirman Bhavan, Bandra,)
Kurla Complex, Bandra (E))
Bombay-400 051.)
)

6. Property Re-developer's)
Association, having office)
at Angel Krishna Sanghi)
Path Gamdevi)
Bombay-400 007.).Respondents

Mr. G. G. Kaleskar, Sr. Counsel with Mr. A. C. Mahimkar, Advocate for the Petitioners.

Mr. Ravi Kadam, Advocate General with Mr. Niranjan Pandit,AGP for Respondent No.1.

Mr. K. K. Singhvi, Sr. Counsel with Mr. A. Kamat and Mrs. P. A. Purandare, Advocate for Respondent Nos. 2 to 4.

Mr. R. M. Sawant, Govt. Pleader for Respondent No.5.

Mr. J. Reis, Sr. Counsel with Mr. Y. M. Choudhari, Advocate for Respondent No. 6.

CORAM : F.I. REBELLO,
AND
Smt.V.K. TAHILRAMANI, JJ.
DATE : 21ST NOVEMBER, 2006.

ORAL JUDGMENT

. The Petitioners are tax payers of the

State of Maharashtra and rate-payers of Respondent No.2. All of them are nationals and citizens of India, and have been active in agitating various social issues. By the present petition, they have sought quashing of notification dated 25th January 1999, whereby modifications have been made to the Development Control Regulations for Greater Bombay, 1991. Regulation 31 was modified by adding a proviso making non applicable height restrictions for reconstruction and redevelopment of old buildings undertaken under Regulation 33(7), 33(8) and 33(9) and which are not affected by the Costal Regulation Zone Notification dated 19th February 1991, issued by the Ministry of Environment and Forest, Government of India, and orders issued from time to time. Similarly, Regulation 59 was modified, pursuant to which restrictions on height were not to be made applicable for reconstruction and redevelopment of old buildings undertaken under Regulation 33(7), 33(8) and 33(9) of the Regulations, which are not affected by the Costal Regulation Zone, dated 19th February, 1991. Similarly, modification was made to

regulation 67, making applicable the provisions of the Regulation only to Grade I and grade II category of Heritage Buildings for reconstruction and redevelopment of old buildings undertaken under Regulation 33(7), 33(8) and 33(9). There is a provision also made for redevelopment of cessed buildings from Grade III and precincts. Regulation 33(7) was replaced by new regulation for reconstruction and redevelopment of cessed buildings. Similarly, Regulation 33(8) and 33(9) were replaced increasing the FSI for reconstruction of buildings for Housing the Dishoused in the island city with additional FSI, which is not available, when owner undertakes development. So also additional FSI was provided for repairs and, reconstruction of cessed buildings under Urban Renewal Scheme. It is not necessary to refer to Appendix thereof. The Regulations have been made in exercise of the powers conferred on the State of Maharashtra by Sub-section (2) of Section 37 of the Maharashtra Regional Town Planning Development Act, which hereinafter shall be referred to as the MRTP Act.

2. The validity of these Regulations have been challenged, contending that these are not minor modifications. The Petitioners have also sought to challenge the practice of indiscriminate user of TDR on residential plots, which are not eligible as also the Circular under the Caption "Fees for Revalidation of Building Proposals", which is based on the Corporation Resolution No. 563, dated 14-9-1995. Prayer Clause (i) seeks quashing the notification of 25th January 1999 and also the 1994 amendment of the definition of FSI, by insertion of Section 2(13-A) by Maharashtra Act No. 39 of 1994. We may also note at this stage itself that an amendment has also been made to the marginal notes under Section 37 and for the words "**minor modification."** the word **modification** has been substituted." Prayer Clause (ii) seeks to quash Regulation 34, which enables incentive FSI obtained by way of TDR from the Island City to be used in the Suburbs on plots, which do not have marginal side spaces in proportion to the height and length of the building, as required as per original Regulation 29 of DC Regulations ’91. Prayer Clause (iii) is for

quashing the building permission, which is consequential, if prayer Clause (ii) is allowed. Prayer Clause (iv) is to quash Regulation 34 and to direct Respondent Nos. 1,2 and 3 to amend the same as per the norms internationally accepted, particularly from the US from where this concept is borrowed. We are afraid a Court exercising its extra jurisdiction under Article 226 of the Constitution of India or for that matter a civil court exercising powers of judicial review cannot issue a Mandamus or direction to the legislature or its delegate to make any law. That relief therefore, cannot be considered by this Court. Prayer Clause (b) is for quashing Resolution No. 563 of 14-9-1995 of Respondent No.2, which permits the Commissioner to charge a fee. We may at once note here, that the exercise of power under Regulation 64(b) in those cases where discretion can be exercised for relaxation of dimensions. Municipal Resolution lays down the manner in which premium shall be charged. Prayer (c) is consequential to the other reliefs.

3. In support of the petition, the Petitioners have referred to material in the matter of use of FSI in island city, the enactment of MRTP Act and other Acts, and also Development Plans & DC Regulations. It is the case of the Petitioners that use of additional FSI alongwith removal of height restrictions and shrinking of marginal side open spaces has been done in contravention of all Town Planning norms, endangering the health, and safety of the public and also fire safety and causing undue strain , almost to the point of break down of essential services like water and power supply, drainage and sewerage system which was, designed several decades ago, for a much smaller population and also damaging the ecology. Instances are given of various constructions put up which are in contravention of the DC Regulations. In para 6(d) of the Petition, Petitioner No.6 points out to complaints made of illegal construction by H(W) Ward Citizens' Trust. Further instances are set out in paragraph 7. It is the submission of the Petitioners that the various amendments denies them the right to clean environment, recognized as part of right

to life, under Article 21 of the Constitution. It is submitted that the modifications made are changing the nature and character of the Development Plan and consequently are ultra vires Section 37 of the MRTP Act. It is submitted that allowing the change in definition of FSI and allowing increase in FSI and height of the buildings by leaps and bounds, without augmenting the essential services like water & power supply, drainage, sewerage and transport facilities and shrinking side & rear open spaces, which are meant for light and ventilation and open recreation grounds, which are the lungs of the city, amounts to practicing fraud on the statute and is therefore, without the authority of the law, illegal, null and void. It is next submitted that the amendments to the DC Regulations are unreasonable, discriminatory and capricious. It discloses non application of mind as the increased FSI has caused severe strain on infrastructural facilities. For similar reasons, the impugned amendments are productive of public mischief and are destructive of the very concept of FSI which was conceived to prevent congestion of

buildings and population density. The amendments are defeating the very policy and purpose of the Development Plan. The aim of D.P. Plan is to provide facilities for housing, commerce and industry, provisions of schools and play grounds, medical and transport facilities and clean environment which aims for providing a better quality of life. It is submitted that subordinatate legislation cannot subvert the purpose and policy of the legislative enactment. To that extent they are ultra vires the statute and therefore void. Though the concept of TDR in DC Regulation 34 is borrowed from the American Town Planning Scheme and is an excellent concept in so far as acquiring properties for public purpose like recreation or those mentioned in Section 22 of the MRTP Act like play ground, road widening and of making new road without paying monetary compensation, by giving FSI advantage to be used elsewhere, the consequential amendments providing for additional 20% FSI from Slum Schemes and unlimited FSI from island city on receiving plots in the suburbs, without taking into consideration whether receiving plot has

capacity like marginal side spaces and other infrastructural facilities defeats that object. It is also pointed out that discretionary powers conferred on Municipal Corporation under Regulation 64(b) can only be exercised in specific case of clearly demonstrable hardship for reasons to be recorded in writing. The Municipal Resolution which permits the Municipal Commissioner to grant concessions, otherwise than in accordance with the Resolution 64(2) for a premium, is clearly arbitrary and violates the guarantee of protection of equal laws under Article 14 of the Constitution. The delay in filing the petition it is explained, is because the ill effects of the impugned Regulations have now started being felt, when multi storeyed structures started mushrooming and choking the infrastructural facilities.

4. On behalf of the State of Maharashtra Ramanand Tiwari, the Principal Secretary, Urban Development has filed an affidavit in reply. The affidavit first deals with the maintainability of the petition challenging the vires of Regulation 33(7). It is pointed

out that these are part of the Development Control Resolutions, 1991 which have come into force on 25th March 1991. The Regulations have been framed after following the procedure laid down under the MRTP Act. The Development Control Regulations, were challenged in a group of Petitions, being Writ Petition No. 963 of 1991 and Writ Petition No. 996 of 1991. The Regulations though in the original stage at that time, the Scheme of the said Regulations and the Amended Regulations, is the same, except the increase in FSI on account of incentive FSI, now available under Regulation 33(7). Those petitions were dismissed and as such the challenge under the said Regulations would be barred by the principles of constructive "Res judicata". The DC Regulation contains the policy of the State, which has been converted into law. The policy decisions can only be challenged on they being arbitrary, capricious or unreasonable. It is next set out that the Petitioners have raised multi furious issues in the petition, which has no nexus with each other. This involves misjoinder of causes of action. The background in the enactment of

the Maharashtra Housing and Area Development Act 1976 (hereinafter referred to as the MHAD Act) is then set out. In allowing incentive FSI under the amendment under the Regulation 37 was to give incentive to landlords to undertake reconstruction of old cessed buildings, so that inhabitants of the said buildings are rehabilitated, in the reconstructed building. By this a twin objective is achieved. The area gets a face-lift and the tenants are saved from living in perpetual danger and misery. Dealing with the pressure of infrastructure, it is pointed out that due to reconstruction, there is no large density of population in so far as infrastructure is concerned, the construction of new building results in set-back area, which is available for the Corporation for widening and broadening of roads. The sewerage and water requires only marginal spaces. The State is making its best endeavour to see that there is a constant upgradation of augmentation in the infrastructure in the city of Mumbai. Various schemes like MRTP, MUTP are being taken up by the State Government. Dealing with the

concept of TDR, It is pointed out that the Corporation by using the concept of TDR has successfully implemented various proposals of the Development Plan and has also increased the basic infrastructural facilities of the city. Affidavits also deal with the concept of heritage Regulation and slum TDR.

5. An affidavit in reply has been filed on behalf of Respondent No.5. Before the amendment of Regulation 33(7) in term of the 1991 Regulations, 350 slums were undertaken for redevelopment of cessed properties. After the amendment of Regulation 33(7) between 25-1-1999 and 31-8-2004, the NOC's given have been set out. A total of 482 NOC's were issued, 6500 tenants were rehabilitated in the redeveloped cessed property. About 6000 tenant in nearly 300 buildings which are on the verge of completion, will be rehabilitated. In Paragraph 9 the complaints in respect of various constructions have been dealt with. Reply has also been filed on behalf of Respondent no.2 It is submitted that there is gross, inordinate and unexplained delay in filing the present petition. Before

making the amendments, due procedure set out in the MRTP was complied with and only thereafter D.C.Regulations were amended. Petitioners did not raise any objections at the time of public notice and public hearing. The Petitioners have given no explanation for the delay and on this ground alone the Petition ought to be dismissed. It is pointed out that there is a presumption as to the constitutionality of the DCRs. There cannot be challenge on account of non application of mind and the burden is on the Petitioners to show that there is a clear transgression of Constitutional principles and there is a presumption that the legislature has correctly appreciated the needs of the people and based on its experience has correctly amended the Regulation as per the needs of the people. It is then explained as to why the challenge to DCR 33(7) must fail. Dealing with the contention that FSI and planning policies have been changed from time to time, it is submitted that the planning is not a static but a dynamic process entrusted by the legislature to expert planning authorities. The planning process changes from time to time

as per the needs and requirements of the city at the people. The planning authorities from time to time, make changes or amend the Development Control Regulation, as may be required by the city, and that is a matter of policy. In so far as infrastructure is concerned, it is pointed out that no material has been placed, nor particulars are given. The exercise of power under DCR 64(b) is then explained.

6. As noted from the discussion, considering the plea raised and as understood , one of the main challenge is to DCR Regulation 33(7). We may point out that challenge to DCR 33(7) was made before a learned Bench of this Court, in the case of **Joseph Bain D'Souza and Ors. Vs. State of Maharashtra and Ors. [2005 Vol. 107(4) Bom. L.R.565].** That petition was disposed off by issuing various directions. The matter was taken up in appeal before the Supreme Court in **Jayant Achut Sathe Vs. Joseph Bain D'Souza and Others [(2006)6 Supreme Court Cases 11].** The Supreme Court has remitted the matter to this Court to examine the various issues set

out in paragraph 7 of the judgment including the challenge to Regulation 33(7) as amended in 1999. The appeals have been fixed for hearing before the Supreme Court in December 2006. In our opinion, therefore, as the issue of challenging DC Regulation 33(7) being an issue before the Supreme Court, it would not be appropriate for this Court to deal with the said issue.

7. There is yet another challenge namely to DC Regulation 34. That issue has been considered in Writ Petition No. 637 of 2003. It has been disposed off by a reasoned judgment today. The main challenge which were considered in that petition were - **i)** whether the DC Regulation 34 and Appendix VII-B are ultra vires Article 14 and 21 of the Constitution of India in as much as they are manifestly arbitrary, unreasonable and discriminatory. **ii)** Whether DC Regulation 34 in as much as it permits or provides for the doubling of construction area (F.S.I.) to occupants in the suburbs as also the amendment deduced in the form of Appendix VII-B permitting the use of slum TDR in the three

railway corridor is violative of Article 14 of the Constitution of India and other issues. We have disposed of those petitions and certain directions have also been issued. Those issues therefore, will be covered by a judgment in Writ Petition No. 637 of 2003.

8. It is also submitted that Section 37(1) authorises the Planning Authority or the State Government to carry out modification in a sanctioned Development Plan, which does not change the nature or character of the sanctioned Development Plan. Though the expression, character of the Development Plan is not defined in Section 37, the same can be understood, with reference to the essential features or contents of the Development Plan, which are mentioned in Section 22 and more particularly in Section 22(m) and Section 22-A of the MRTP Act. It is therefore, submitted that since the impugned notification has increased the FSI by permitting increase in height of the building by leaps and bounds, at the same time has shrunk the open spaces, not only on the public reccreation ground but also the mandatory side setbacks, of the buildings,

which are open lungs of the city. The entire notification dated 25-1-1999 is beyond the scope of Section 37 of the MRTP Act and is therefore ultra vires, void and amounts to fraud on the Constitution and ought to be thrown out lock, stock and barrel. For that purpose, reliance is placed in the judgment of **Nathwani Vs. State of Maharashtra [78 BLR(1)].**

9. The MRTP Act in Chapter III, provides the scheme for preparation, submission and sanction of Development Plan. Section 22-A of MRTP Act explains that the expression "of a substantial nature" in Sections 29 or 31 are in relation to the modifications made by the Planning Authority or the officer appointed by the State Government, as set out therein. A perusal of Section 22-A of MRTP Act would make it clear that the expression of a substantial nature are in relation to Section 29, which are modifications by the Planning Authority or the officer in the Draft Development Plan and to Section 31 which pertains to the sanctioning of the draft Development Plan. The said expression is not referrable to Section 37 of the Act, which only uses the

expression modification of any part of or any proposal made in, a final Development Plan is of such a nature that it will not change the character of such Development Plan. The expression therefore, used is the character of such plan. We may consider some of the judgments, dealing with the aspect of the Development Plan. In **Niwara Hakka Suraksha Samiti and another Vs. State of Maharashtra and Ors in Writ Petition No.963 of 1991 alongwith other petitions, decided on April 16, 1991** which was a challenge to the Development Control Regulations for Greater Bombay 1991, one of the expressions considered, was the word "modification". This was in the context of finalisation of the Development Plan under Section 28. In that context, the learned Bench of this Court noted that the word **"modifications"** has to be considered in contradistinction to substitute something which may be totally new or different. The process involved in **modification** is one of alteration and it must be considered how radical that alteration is. The alteration may consist of additions or subtractions or other changes in what is

already there, or, no doubt, any combination of these. But throughout, there must be continued existence of what, in substance, is the original entity. Once one reaches a stage of wholesale rejection and replacement, the process must cease to be one of the **modification.** It is in that context the Court posed a question whether a stage has been reached of wholesale rejection or replacement. Under Section 31, it was open to the State Government to make substantial modifications in the draft Development Plan by following the procedure set out therein. The expression before Section 22-A, was introduced by Maharashtra 39 Act of 1994, was understood in the context of substituting something which may be totally new or different. The Act has subsequently been amended to explain as to what will be the change of a substantial nature in a draft development plan, as in those cases the procedure for inviting objections is different, then in a case of minor modification. The terms once again came up for consideration in **M.A. Panshikar Vs. State of Maharashtra through its Urban Development and another [2002(5) Bom.C.R.**

318], which was case a of challenging notification issued by the State Government in the matter of sanction to the draft Development Plan, submitted by the Thane Municipal Corporation. The second notification was to the draft Development Control Regulations and the third notification to the modification of the final Development Plan. The learned Division Bench noted that the concept of modification of substantial nature in Section 22-A is not relevant while considering modification of the final Development Plan, under Section 37 of the MRTP Act. The learned Bench noted that the words **minor modifications** in the marginal notes were substituted by the word **modifications** and the reference is to modifications which will not change the character of such Development Plan. The Court on the facts of that case which had permitted increase of FSI of 3, for dilapidated buildings destroyed by fire, collapse or demolished, noted that the benefit of increase in FSI was available to a few structures. The Courts held that grant of additional FSI limited to such structures cannot alter the character of the plan. The

matter was again in issue before the Supreme Court in **Bombay Dyeing and Manufacturing Co. Ltd Vs. Environmental Action Group [(2006) SCC 434].** The Supreme Court was considering a case arising from DCR 58 and whether the modification would alter the character of the plan. The Supreme Court noted the expression '**change**' which had come up for consideration in **Forward Construction Co.& others Vs.Prabhat Mandal (Regd), Andheri and others** [**1986(1) SCC 100]** and after noting the dictionary meaning, observed "so, the general meaning of the word "change", in the two dictionaries is "to make or to become different, to transform or convert." If the user was to be completely or substantial changed, only then the prior modification of the Development Plan was necessary." The question of modification of plan had come up for consideration in **Legg and others Vs. Ilea [1972(3) All ER 177**]

wherein it is stated as under- "The process involved in **modification** is thus, one of alteration and it must be considered how radical that alteration is. Alteration may consist of additions or subtractions or other changes in what is already there, or, no

doubt, any combination of these. But, throughout, there must, I think, be continued existence of what in substance is the original entity. Once one reaches a state of wholesale rejection and replacement, the process must cease to be one of modification." In **Puran Lal Vs. President of India [(1962)1 SCR 688],** it was stated "the word modification means the action of making changes in an object without altering its essential nature or character."

. The question therefore, which is required to be answered is - whether notification dated 25th January 1999 can be said to alter the character of the plan. The notification dated 25th January 1999 was issued with reference to the need for repairs and reconstruction of old and dilapidated, cessed buildings. As noted in the affidavit of Tiwari, the object was two fold to give new look to the area by replacing old dilapidated building and to rehouse the tenants in the newly reconstructed building In return, the developer was allowed FSI which could be used by the developer on the plot or elsewhere, to enable the scheme to succeed, considering the

additional FSI which was sanctioned. There was a need to provide for increased height for the newly constructed buildings. Development Control Regulation 59 was in the matter of area covered by the Costal Regulation Zones, in respect of which the height Regulations would not be affected, as they will be covered by the Costal Regulation Zone notification. Regulation 33(7) was again permitting additional floor index in respect of reconstruction development of such property, located in island city. Similarly additional FSI was for the purpose of construction of houses to dishoused, who are displaced by the project undertaken by the Corporation, and also for repairs or reconstruction of cessed buildings and urban renewal scheme. It would be clear therefore, that in the Planning area itself, there were structures. The Amendment of Development Control Regulation provides for demolition or reconstruction of the cessed buildings in the same area by granting additional FSI to house those who were staying in the old buildings. In our opinion, this cannot be said to change the character of the plan. It is not that every building has been

permitted additional FSI. It is only in those cessed buildings and others as contained in notification, which have been permitted additional FSI to meet the objective of Development Control Regulations. It also cannot be said that exercise of powers amounts fraud on the statute and or on the Constitution. The MRTP Act permits modification of Final Development Plan by the procedure laid down. The procedure includes inviting objections and hearing the objections. In other words, a consultative process. The amendments themselves were based on recommendations of a Study Group under the Chairmanship of Mr. D. M. Sukhtankar. The amendments were made to carry out and give effect to the recommendations of the Study Group, in order to repair / reconstruct old and dilapidated buildings. In our opinion, it cannot be said that this amounts to a fraud on the statute or Constitution. The learned counsel has relied on the judgment in case of **Dr. D. C. Wadhwa and others Vs. State of Bihar and others [(1987)1 Supreme Court Cases 378].** In that case it was noted by the Supreme Court that the State of Bihar was

issuing number of ordinances without enacting them into law and it is in these circumstances, the Supreme Court noted that the Constitutional Authority cannot do indirectly what it is not permitted to do directly. If there be a constitutional provision inhibiting the constitutional authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge. That would be clearly a fraud on the constitutional provision. That contention must also be rejected.

9. It may be noted that another challenge which has been raised by the Petitioner is to contend that Town Planning, Regulation of Land Use and Construction of Buildings and slum improvement and upgradation are within the exclusive jurisdiction of the municipalities. This has been made with reference to the 74th Constitutional Amendment, which introduced part IX-A into the Constitution. Relying upon article 243 ZF, it has been submitted that all laws which are inconsistent thereafter and in derogation authority of the municipalities shall cease to be in force within one year of

the coming into force of the 74th constitutional amendment. It is therefore, submitted that various acts including the Slum Act 1971 would be null and void. We may point out that the Petitioner has not amended his petition to raise such a plea. This contention is sought to be urged, based on affidavit dated 7th April 2006 of Mr. Achintya Mukharji of Petitioner No.2. In the absence of pleadings, we informed the learned counsel that we do not propose to decide that issue in the present petition, assuming that such a plea can arise, but have granted liberty to him, considering that cause of action is distinct from what has been set out in the petition, if advised to file a fresh petition, wherein that challenge can be taken and the decision in this case will not operate as res-judicata or prevent him from filing a petition on that cause of action.

10. Yet another challenge raised in this petition is to the misuse of the discretionary powers conferred on Municipal Commissioner for granting concession for deficiency in open spaces by DC Regulations 64(b). That issue

had come up for consideration before another Division Bench of this Court in **Rajendra Thakkar Vs. Municipal Corporation of Greater Bombay [2004 Vol. 106 (4) Bom. L.R.598].** The learned Division Bench has laid down various guide-lines for exercise of that discretionary powers. That issue has already been considered by us, while disposing of Writ Petition No. 637 of 2003. In other words, that issue covered by the judgment in **Rajendra Thakar (supra)** will be covered in **Writ Petition 637 of 2003** and in the case of **Janhit Manch and another Vs. State of Maharashtra and another**.

. An ancilliary argument which has been raised is about Resolution No. 563/1995. By that Resolution certain fees have been fixed, as can be noted to **Exh.C** to the petition. In other words, those fees can only be charged in respect of powers referred by DC Regulation 64(b), when the discretion is exercised by the Commissioner. We are not concerned with the some other fees, which are chargeable therein. At any rate, there are no specific challenges to fixing the quantum of fees. That

contention, therefore, has also to be rejected.

11. The challenge by the Petitioners on the ground of Article 21 of the Constitution of India, is based on the lack of infrastructural facilities. We have considered the same in the background to challenge to DC Regulation 34 in **Janhit Manch (supra).** It is therefore, not necessary for us to once again consider the same argument in the present case. The decision in **Janhit Manch** in the matter of Article 21, and the infrastructure will also govern the same issue in the present case.

12. It may be mentioned that delay and laches in a challenge to a Development Plan and DC Regulations, are relevant considering that it is of a limited period and as in the mean time various third party rights are created. In the circumstances, we really find it difficult to entertain a petition after a lapse of nearly five years. We have, however, considered the fact that Petition was treated as PIL, and has been heard on merits. We

therefore, do not propose to dismiss the same on the ground of delay and laches. The Respondents have no doubt have argued that in view of the judgment in **Niwara Hakka Suraksha Samiti (supra),** the petition is barred by the principles of res-judicata. We have examined that contention in **Janhit Mancha (supra),** and for the reasons set out therein, we have rejected the said contention.

13. The directions issued in Writ Petition No. 637 of 2003 to the extent they cover issues in this petition, will also apply to this petition. Except and to that extent otherwise, for all the aforesaid reasons, rule is discharged. There shall be no orders as to costs.

[Smt. V.K. TAHILRAMANI,J.] [F.I. REBELLO,J.]